

# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant, Adv.Pro.No.  
08-01789 (SMB)

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,  
Defendant.

-----X  
In Re:  
BERNARD L. MADOFF,  
Debtor.

-----X

IRVING H. PICARD, Trustee for  
the Substantively Consolidated  
SIPA Liquidation of Bernard L.  
Madoff Investment Securities  
LLC and Bernard L. Madoff,

Adv.Pro.No.  
10-04362 (SMB)

Plaintiff,

v.

SAGE ASSOCIATES;

LILLIAN M. SAGE, IN HER CAPACITY  
AS PARTNER OR JOINT VENTURER OF  
SAGE ASSOCIATES AND INDIVIDUALLY  
AS BENEFICIARY OF SAGE ASSOCIATES;

Deposition of:

MALCOLM SAGE

November 15, 2017

Page 26	Page 28
<p>1 decision, but my mother was an investor, and I 2 can't recall if she made suggestions, but she 3 probably came to meetings with Mr. Madoff. 4 Q. And when you say it was an equal 5 decision between you, your brother and your 6 sister, did either one of them, to your 7 recollection, express any preference for any 8 other broker? 9 MR. KRATENSTEIN: He said a joint 10 decision but go ahead, answer the question. 11 A. Well, we did invest some monies 12 with Ms. Evans -- Ms. Lattimer at Evans &amp; 13 Company. 14 Q. How did you communicate with 15 Mr. Madoff once you had invested? 16 MR. KRATENSTEIN: We're now after 17 investment? 18 MS. KERANEN: Yes. 19 A. We would meet with him, and we 20 would call him on the telephone. 21 Q. How often would you meet with him? 22 A. At what period of the year are you 23 asking? 24 Q. Let's say -- you started investing 25 in 1979. Let's say from 1979 to 1981, how often</p>	<p>1 A. I would say not. 2 Q. So, just to restate it, so you're 3 saying from 1979 to let's say 1990 you would 4 meet with him a couple of times a year at his 5 offices? 6 A. Correct. 7 Q. Who besides you would attend those 8 meetings? 9 A. In general it would be my brother, 10 my sister and myself. Sometimes my mother. 11 Q. Was there any particular reason 12 that your mother would attend some meetings and 13 not others? 14 A. She was an investor as well. Oh, 15 why might she not come at times? 16 Q. Right. 17 A. My mother did things her way. I 18 can't speak for my mother. 19 Q. You also mentioned that you had 20 calls with Mr. Madoff. Do you recall, let's say 21 in the same time period, 1979 to 1981, how many 22 times you would call him? 23 MR. KRATENSTEIN: I'm sorry, I 24 just want to be clear because you swapped time 25 periods. You're now '79 to '81?</p>
Page 27	Page 29
<p>1 would you meet with him? 2 A. Probably a couple times a year. 3 Q. Where would you meet? 4 A. Always at his office. 5 Q. How long would those meetings 6 last? 7 A. Wow, that's hard to say. They 8 weren't short. 9 Q. When you say they weren't short, 10 can you ballpark that for me? 11 A. They were -- we had discussions. 12 There was give and take. I really can't say. 13 If I said -- if I said they lasted an hour, it 14 really would be based on what makes sense to me 15 now and not -- you know, not necessarily -- 16 Q. Not a reflection of -- 17 A. -- being accurate -- 18 Q. -- at that time? 19 A. No. You want to say one thing, 20 but you're not sure. 21 Q. So from 1981, did you continue to 22 meet with him through the '80s? 23 A. We met with him regularly. 24 Q. And did the frequency of your 25 meetings change in the '80s at any point?</p>	<p>1 MS. KERANEN: Um-hum. 2 MR. KRATENSTEIN: Okay. And 3 you're assuming that Mr. -- hang on. You're 4 assuming Mr. Sage made the call? Are you really 5 asking about calls initiated by either party? 6 MS. KERANEN: I'm asking, first of 7 all, calls he participated in with Mr. Madoff 8 that he initiated. 9 MR. KRATENSTEIN: That Mr. Sage 10 initiated? 11 MS. KERANEN: And then I was going 12 to ask about any calls that BLMIS made to the 13 Sages. 14 MR. KRATENSTEIN: Well -- and Just 15 one -- as you know, BLMIS did not come into 16 existence until I think 2001. So if we're in 17 the 1979 to 1981 time frame, I think you're 18 really talking about calls that Mr. Madoff 19 initiated. I think that would be more precise. 20 But why don't you ask your question and he'll 21 answer. 22 MS. KERANEN: Sure. 23 BY MS. KERANEN: 24 Q. So you testified that you both met 25 with Mr. Madoff and that you had calls with him.</p>

Page 30

1 From the 1979 to 1981 period, about how many  
2 times would you call Mr. Madoff per year?

3 A. As much as I'd like to answer that  
4 question, I really can't recall that. I can't  
5 recall how many times I called anybody, you  
6 know. Maybe I can't recall when I called him  
7 last year, but I certainly recall -- I can't  
8 recall what I did 30 years ago in terms of phone  
9 calls made. Easier to recall meetings.

10 Q. So would you say you didn't have a  
11 regular pattern of calling him?

12 A. I would say that that's correct.

13 Q. Did he ever initiate calls to you?

14 A. To my recollection, yes.

15 Q. And do you recall what the  
16 circumstances were of those calls?

17 MR. KRATENSTEIN: Let me just  
18 interject. Sorry, I just need a clarification.  
19 Now this is at any time; not limited to '79 --

20 MS. KERANEN: No, we're still in  
21 the '79 to '81 time period.

22 MR. KRATENSTEIN: Okay.

23 A. Oh, we're limited to that period?

24 It's pretty much a haze to me, to be honest.

25 Q. When the calls that you originated

Page 32

1 during that '79 to '81 period.

2 Q. And during that period, did you  
3 actively monitor your investments with  
4 Mr. Madoff?

5 A. I did.

6 Q. And what did that monitoring  
7 consist of?

8 A. Reviewing the statements and the  
9 confirms.

10 Q. And when you say confirms, what  
11 kind of confirms were those?

12 A. Confirms on the convertible  
13 arbitrage trades.

14 Q. And were those confirmations  
15 coming from BLMIS or Mr. Madoff or were they  
16 coming from a third party?

17 MR. KRATENSTEIN: I'll just object  
18 to the use of BLMIS in this time period. You  
19 can answer the question.

20 I think we all know BLMIS didn't  
21 exist in this time period, so I think -- I think  
22 the question is geared towards Mr. Madoff, and  
23 you can correct me if I'm wrong, or Madoff's  
24 firm at that time.

25 A. They came from Madoff.

Page 31

1 to Mr. Madoff occurred in 1979 to 1981, was  
2 there anyone else participating in those calls?

3 A. No.

4 Q. To your knowledge in the 1979 to  
5 1991 call -- time period when Mr. Madoff would  
6 call you, was there anyone else participating in  
7 those calls?

8 A. No. The problem I'm having with  
9 your questions is that when you restrict it to a  
10 certain period of time, it's just hard for me to  
11 remember one short time frame 30 years ago or 40  
12 years ago to a short time frame 38 years -- it's  
13 just complicated.

14 Q. That's fair. What I'd like to do  
15 would be to talk to you about individual time  
16 periods and then your general recollection so we  
17 can try and be as specific as possible in the  
18 transcript.

19 A. I probably did not talk to him as  
20 much during the '79 to '81 or '82 period as I  
21 did thereafter. I was in law school, I was  
22 taking a Bar exam. I was starting my career.  
23 We were invested in convertible arbitrage. I  
24 probably had less interaction with him, now  
25 that, you know, I think about it, at that --

Page 33

1 Q. So -- and let's just tie this up  
2 in the '79 to '81 time period. Do you know if  
3 your siblings spoke with Mr. Madoff on the  
4 phone?

5 A. I wouldn't know that. I wouldn't  
6 think they did.

7 MR. KRATENSTEIN: Don't speculate.

8 THE WITNESS: Yeah.

9 MR. KRATENSTEIN: If you don't  
10 know, you don't know.

11 A. I don't know.

12 Q. Let's turn to the 1980s. Can you  
13 tell me about your phone calls with Mr. Madoff  
14 during that period?

15 A. A lot changed in 1982. I had a  
16 greater involvement with Madoff after '82, so as  
17 it comes back to me now when you talked about  
18 the '79 to '81 period when we were involved in  
19 convertible arbitrage, the contact was probably  
20 less. It probably increased after that.

21 Q. And why is that?

22 A. As -- after we sold my father's  
23 business and could focus more on our portfolio  
24 of stocks, my sister had children, my brother is  
25 getting married, I met my wife. Our lives were

Page 34	Page 36
<p>1 changing. There were things that needed to be 2 addressed, a future that needed to be thought 3 of.</p> <p>4 We were involved in the 5 convertible arbitrage trading with Madoff. At 6 Evans &amp; Company we owned a portfolio of stocks. 7 We saw the market as being strong. We spoke to 8 Madoff about the market.</p> <p>9 It was our idea, given our ages, 10 given where we were at the point in our lives 11 and careers that we wanted to build a nest egg, 12 develop a portfolio that would address our 13 future needs, whether it be in terms of 14 retirement, whether it be in terms of medical 15 needs, whether it be in terms of education for 16 our children. We decided that we thought it was 17 in our interest at that point, in that stage of 18 our lives, to build a portfolio of stocks to 19 move away from the convertible arbitrage.</p> <p>20 We met with -- we met with Madoff, 21 and we instructed him to do that, and he 22 followed our directions.</p> <p>23 Q. So just to make sure I understand, 24 your testimony is that in 1982, you and your 25 siblings met with Mr. Madoff and instructed him</p>	<p>1 portfolio of stocks in the Sage -- in the 2 Maurice Sage Trust account, as well as the Sage 3 Associates account.</p> <p>4 Does that clarify it for you?</p> <p>5 Q. Yes, thank you.</p> <p>6 So in 1982 your testimony is that 7 you had two accounts, the Maurice Sage Trust and 8 the Sage Associates account. The Maurice Sage 9 Trust account, when was that opened?</p> <p>10 A. It was a testamentary trust that 11 was established pursuant to my dad's will. It 12 was probably opened sometime in the late '70s.</p> <p>13 Q. And when was the Sage Associates 14 account opened, if you recall?</p> <p>15 A. Probably right at around the same 16 time.</p> <p>17 Q. So starting in 1982 your testimony 18 is that you became more involved with actively 19 managing your portfolios with Mr. Madoff; is 20 that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So tell me about the frequency of 23 your meetings with him from 1982 through 1990.</p> <p>24 A. I don't think that the frequency 25 of our meetings changed significantly during</p>
Page 35	Page 37
<p>1 to move away from the convertible arbitrage 2 strategy and towards building a portfolio of 3 stocks?</p> <p>4 A. That is mostly correct.</p> <p>5 Q. What did I get wrong?</p> <p>6 A. What you got wrong is that I 7 didn't fill in a blank for you. We had separate 8 accounts with Madoff. We had a Sage Associates 9 account at that time.</p> <p>10 Q. This is in 1982?</p> <p>11 A. In 1982. And we had a Maurice 12 Sage Trust account. We decided that in the 13 trust account we would maintain half of our 14 assets in convertible arbitrage, and the other 15 half of our assets we would purchase 16 securities -- if I recall they were Dupont and 17 General Motors -- and write covered calls 18 against them. That is what we did in the 19 Maurice Sage Trust account.</p> <p>20 In the Sage Associates account, 21 we, I believe it was in mid-1982, we purchased 22 simply a portfolio of stock. At some later 23 point, shortly later, we decided to move away 24 from the covered calls writing and entirely away 25 from convertible arbitrage and establish a</p>	<p>1 that time period. I'm not sure that the 2 frequency for our meetings ever really changed 3 significantly.</p> <p>4 Q. So just so I understand, you're 5 saying from the time once you opened investments 6 with Mr. Madoff in the late '70s, around 1979, 7 through the dissolution of BLMIS, you continued 8 to meet with Mr. Madoff several times a year?</p> <p>9 A. Correct.</p> <p>10 MR. KRATENSTEIN: I think he said 11 a couple times a year.</p> <p>12 Q. Couple times a year. So would 13 that be two or less or more than two?</p> <p>14 A. Probably two, two probably.</p> <p>15 Q. Twice a year?</p> <p>16 A. It's a good ballpark figure.</p> <p>17 Q. Was there a pattern? Like did you 18 meet every spring and fall?</p> <p>19 A. There may have been, but I 20 wouldn't recall that. I don't believe it, but 21 it's possible.</p> <p>22 Q. Do you remember when your last 23 meeting at -- with Mr. Madoff was?</p> <p>24 A. Physical meeting at his office?</p> <p>25 Q. Yes.</p>

Page 38

1 A. I would --  
 2 MR. KRATENSTEIN: Don't guess.  
 3 A. Yeah.  
 4 MR. KRATENSTEIN: Give your best  
 5 recollection, but don't guess. If you can give  
 6 a recollection, give a recollection. But if you  
 7 have to guess, that's speculating.  
 8 A. My best recollection is that it  
 9 was in 2008.  
 10 Q. And do you remember what time of  
 11 year it was?  
 12 A. It would not have been later in  
 13 the year.  
 14 Q. Why is that?  
 15 A. That's just my recollection  
 16 because of -- given what happened in December of  
 17 that year, my recollection is I hadn't met with  
 18 him in the immediate prior months. It was  
 19 probably earlier in the year.  
 20 Q. So you would say sometime before  
 21 June 2008?  
 22 A. I think that's fair to say, but  
 23 I'm not certain.  
 24 Q. Do you happen to recall what you  
 25 discussed at that meeting?

Page 40

1 I think we made it there.  
 2 In addition, the market was high.  
 3 Our stocks were predominantly long term. We  
 4 thought it was a good time to sell. So we made  
 5 that decision.  
 6 We also were starting to struggle  
 7 between ourselves in the sense that -- we had  
 8 this tenancy in common, and as part of that  
 9 tenancy in common, we had to maintain equal  
 10 shares because -- in a stock portfolio, because  
 11 if we had unequal shares, how could one state  
 12 what one owned of one stock versus another?  
 13 Q. Let me stop you right there for  
 14 just a second. When you say you had to maintain  
 15 equal shares, are you talking about equal shares  
 16 amongst the three of you, like you each had to  
 17 hold a third or --  
 18 A. That is correct.  
 19 Q. Okay. But you didn't have to  
 20 maintain equal shares of the actual stocks you  
 21 were buying?  
 22 A. Correct, we did not have to  
 23 maintain equal shares of that. That had nothing  
 24 to do with it.  
 25 Q. All right. Please continue.

Page 39

1 A. No, I don't.  
 2 Q. Do you happen to recall how long  
 3 the meeting was?  
 4 A. My recollection is that in 2008 we  
 5 met with him -- actually, I think it was only I  
 6 met with him, and that the meeting was about  
 7 what we would do going forward with our  
 8 accounts. We had made a significant change in  
 9 early 2007, and we were indecisive in 2008 about  
 10 what we wanted to do. So I met with him and I  
 11 don't think we made any decisions.  
 12 Q. When you say you made a  
 13 significant change in your accounts in early  
 14 2007, can you tell me about them?  
 15 A. In January of 2007 -- and it's  
 16 possible that it happened in December of 2006 --  
 17 we instructed Madoff to sell our entire  
 18 portfolio of stocks that we held. That was a  
 19 big decision for us.  
 20 Q. Why did you make that decision?  
 21 A. I think we had reached our  
 22 objectives in terms of goals we had set back in  
 23 the early '80s. We were looking -- we had  
 24 looked to establish a portfolio that would be  
 25 long term, that would produce a solid nest egg.

Page 41

1 A. So, we were in a situation where  
 2 we had now reached different stages in our  
 3 lives, and we couldn't all -- it wasn't easy.  
 4 If my brother wanted to withdraw money or my  
 5 sister wanted to withdraw money or if I wanted  
 6 to withdraw money, we all had to withdraw the  
 7 same amount of money. And if we wanted to add  
 8 money, we would all have to add the same amount  
 9 of money. It was unwieldy.  
 10 It was -- it was foreseeable that  
 11 it would become harder to reach a consensus, and  
 12 it made sense, in that sense, to no longer own a  
 13 shared portfolio of stocks in a tenancy in  
 14 common.  
 15 Q. So in December of 2006 or early  
 16 2007, you instructed Mr. Madoff to sell all the  
 17 stocks in your portfolio?  
 18 A. That is correct.  
 19 Q. What did you do with the money?  
 20 A. The monies remained at Madoff.  
 21 Q. And that is across all of your  
 22 accounts that you had stocks in; you instructed  
 23 him to sell all of them?  
 24 A. Are you asking me if we withdrew  
 25 money after we instructed --

Page 42

1 Q. Not yet. We'll get there.  
 2 A. Okay.  
 3 Q. I'm just saying, when you told  
 4 him, Mr. Madoff, please sell all the stocks, was  
 5 that instruction across all of your open  
 6 accounts --  
 7 A. No.  
 8 Q. -- or was that limited -- okay.  
 9 Which accounts did you instruct him to sell all  
 10 your stocks in?  
 11 A. We instructed him to sell the  
 12 stocks in the three accounts where we had --  
 13 which I referred to as stock accounts.  
 14 MR. KRATENSTEIN: Do you want him  
 15 to name those accounts?  
 16 MS. KERANEN: Yes, please.  
 17 A. That would be Sage Associates,  
 18 Sage Associates II, which was the successor  
 19 entity to the Maurice Sage Trust which I  
 20 mentioned earlier, and the Maurice S. Sage  
 21 Foundation, Inc.  
 22 Q. To your knowledge, at this time  
 23 period in late 2006 or early 2007, did you have  
 24 stock in any other of your accounts at Madoff?  
 25 A. A portfolio of stocks, as opposed

Page 44

1 couldn't state with any certainty.  
 2 Q. Did the subject of those meetings  
 3 change? For instance, did you make any  
 4 different investment choices that you discussed  
 5 with Mr. Madoff?  
 6 MR. KRATENSTEIN: As compared to  
 7 the earlier meetings in the prior decade?  
 8 MS. KERANEN: Right.  
 9 A. Now we're talking between 1990 and  
 10 2000?  
 11 Q. Right. For example, you testified  
 12 that you made a major shift in your investment  
 13 strategy in 1982. Were there any other sorts of  
 14 investment shifts like that in the 1990s?  
 15 A. In 1995 to protect our long-term  
 16 positions, we instructed Madoff to sell our  
 17 shares short against the box, based on a  
 18 recommendation he made to protect those --  
 19 protect those gains.  
 20 Q. And you followed Mr. Madoff's  
 21 instruction?  
 22 MR. KRATENSTEIN: Objection.  
 23 A. No, he didn't make any --  
 24 MR. KRATENSTEIN: Hang on, hang  
 25 on.

Page 43

1 to being involved in other type -- forms of  
 2 investments.  
 3 Q. Right, a portfolio of stocks?  
 4 A. Those were the only accounts where  
 5 we had a portfolio of stocks. Yes, those were  
 6 the only accounts.  
 7 Q. Let's take a step back and go back  
 8 to your meetings with Mr. Madoff in the 1990 to  
 9 2000 period.  
 10 A. Okay.  
 11 Q. Did the frequency or length of  
 12 those -- did the frequency of those meetings  
 13 change at all from your meetings in the '80s?  
 14 A. It would be impossible to state --  
 15 the frequency didn't change, I would say. Did  
 16 you ask about the length too?  
 17 Q. That was going to be my next  
 18 question.  
 19 A. I thought you had already said  
 20 that.  
 21 Q. I was going to say it. You're  
 22 anticipating me.  
 23 Did the length of those meetings  
 24 change at all?  
 25 A. That's something I couldn't -- I

Page 45

1 MS. KERANEN: I'm sorry.  
 2 MR. KRATENSTEIN: Slow. Object to  
 3 form.  
 4 Q. And you followed Mr. Madoff's  
 5 recommendation to sell short against the box?  
 6 A. We thought about it. We  
 7 understood why he was making the suggestion. We  
 8 thought it was a good idea, and we instructed  
 9 him to do that.  
 10 Q. How long did that strategy stay in  
 11 place?  
 12 A. It wasn't so much a strategy as a  
 13 form, one way of dealing with our investments.  
 14 Periodically over the next decade, we were short  
 15 against the box, or brought back into the shorts  
 16 against the box.  
 17 Q. So you said next decade. So are  
 18 you capping that at 2005?  
 19 A. I would cap that at when we sold  
 20 the stock. 2007.  
 21 Q. So late 2006, early 2007?  
 22 A. Correct.  
 23 Q. And let's talk about your calls  
 24 with Mr. Madoff during the 1990s to 2000 period.  
 25 Did you have phone calls that you originated to

Page 218

1 Q. Do you understand what no balance  
2 forward means in this context?

3 A. My understanding is that this was  
4 a new account, a new Sage Associates account  
5 that was created.

6 Q. And do you know why this account  
7 was created in April 2008?

8 A. We made a decision in 2006 to  
9 early 2007, at some point we informed Madoff and  
10 directed him that we wanted to sell our entire  
11 portfolio of stock.

12 At that point we were discussing  
13 transitioning the account to the basket  
14 arbitrage.

15 Q. Let me stop you there just to make  
16 sure I understand correctly. At this point in  
17 late 2006, early 2007, you had decided to sell  
18 out your stock portfolio and switch to  
19 Mr. Madoff's split-strike strategy?

20 A. We hadn't made -- we had made the  
21 decision to sell out our stock positions but we  
22 had not yet made the decision to transition to  
23 basket arbitrage, split-strike as you call it.

24 Q. What were you doing with the funds  
25 in the meantime?

Page 220

1 A. That is correct.

2 Q. And you directed Mr. Madoff to  
3 sell your positions --

4 A. That is correct.

5 Q. -- or otherwise close out your  
6 positions and stock --

7 A. That is correct.

8 Q. And then later in 2007 you  
9 contemplated reopening your stock positions?

10 A. No. In 2007 after we sold our  
11 positions, we had made a decision to continue  
12 with stock accounts and not -- not make the  
13 transition.

14 The thinking for months had been  
15 that we would make the transition to basket  
16 arbitrage, and ultimately we decided in 2007 not  
17 to do that.

18 Q. Okay. So in 2007 after you had  
19 directed Mr. Madoff to close out your stock  
20 positions, what did you do with the money? Did  
21 you buy back into any stocks?

22 A. We did.

23 Q. Do you recall which stocks you  
24 selected?

25 A. One stock I recall is Priceline.

Page 219

1 A. The funds in the account?

2 Q. Correct.

3 A. Well, while we were -- in 2007 we  
4 ultimately decided to try to establish a new  
5 portfolio and to go forward again with a  
6 portfolio of stocks and not go into the basket  
7 arbitrage. It was a decision that we were  
8 uncertain about, and by 2008 we had made a  
9 decision to move out of the stock account,  
10 traded stock accounts.

11 And so I believe I see a  
12 withdrawal here for \$10 million. I believe we  
13 withdrew the money in early April to pay our  
14 federal taxes, which were significant, and the  
15 money was, while we were deciding exactly what  
16 to do, we decided to put the money into Treasury  
17 bills. That's what we directed Madoff to do,  
18 was to buy Treasury bills while we awaited a  
19 final decision as to what we were going to do.

20 Q. Okay. Let me make sure I  
21 understand your testimony correctly.

22 You decided in conjunction with  
23 your sister and your brother in late 2006 or  
24 2007 to close out of your stock portfolios in  
25 the Sage Associates accounts?

Page 221

1 Another stock I recall was Medco. But what we  
2 did -- as opposed to what we did back in '85, we  
3 didn't at that point buy an entirely new  
4 portfolio of stocks.

5 Q. Do you remember how many stocks  
6 you did purchase?

7 A. Those are the two that I recall.  
8 If you showed me the statement, it might refresh  
9 my memory.

10 Q. And do -- do you recall when you  
11 had closed out of the positions?

12 MR. KRATENSTEIN: Which positions?

13 Q. The -- when you made a decision  
14 and directed Mr. Madoff to close out all of your  
15 stock portfolios, do you know when that was  
16 completed?

17 A. That would have been completed in  
18 January of 2007.

19 Q. And do you know when you directed  
20 Mr. Madoff to buy stocks again for you?

21 A. It would have been shortly  
22 thereafter or right around that time.

23 Q. So shortly thereafter would have  
24 been what time period of the year?

25 A. I'd have to look at the statements



Page 222	Page 224
<p>1 to refresh my memory, but my recollection is</p> <p>2 early in 2007, shortly after we sold out our</p> <p>3 entire portfolio.</p> <p>4 Q. So you would expect your</p> <p>5 statements from 2007 to reflect the closing out</p> <p>6 of all your positions and then the next month</p> <p>7 later all new stock purchases?</p> <p>8 A. I know that they would have</p> <p>9 reflected the termination of all our positions</p> <p>10 and shortly thereafter the establishment of some</p> <p>11 new positions, yes.</p> <p>12 MR. KRATENSTEIN: Is there</p> <p>13 anything he can move away?</p> <p>14 MS. KERANEN: You can move both of</p> <p>15 those away for now.</p> <p>16 I'm handing the court reporter a</p> <p>17 document to be marked as Exhibit 16.</p> <p>18 (Exhibit Trustee-16 marked for</p> <p>19 identification.)</p> <p>20 MS. KERANEN: I'll read the Bates</p> <p>21 number into the record. MDPTPP05047503 through</p> <p>22 05.</p> <p>23 Q. Mr. Sage, do you recognize this</p> <p>24 document?</p> <p>25 A. I do.</p>	<p>1 Q. What's that number there?</p> <p>2 A. Those would be the dividends paid</p> <p>3 on the Walt Disney Company.</p> <p>4 Q. And that's in the amount of a</p> <p>5 \$131,502?</p> <p>6 A. That is correct.</p> <p>7 Q. So this statement is from January</p> <p>8 2007 and reflects that your account, Sage</p> <p>9 Associates, is still holding Walt Disney Company</p> <p>10 stock, correct?</p> <p>11 A. At what point? What are you</p> <p>12 suggesting?</p> <p>13 Q. At the date, January 31st, 2007</p> <p>14 this shows that your account is long \$24 million</p> <p>15 worth of stock?</p> <p>16 A. It does show that.</p> <p>17 Q. Okay. And it shows that you</p> <p>18 received a dividend --</p> <p>19 A. I'm going to correct a slight</p> <p>20 error.</p> <p>21 Q. Sure.</p> <p>22 A. I instructed Madoff to sell all</p> <p>23 our long-term positions at the end of 2006 and</p> <p>24 the early 2007.</p> <p>25 Q. And what are your --</p>
Page 223	Page 225
<p>1 Q. And what is this document?</p> <p>2 A. This document is Sage Associates</p> <p>3 January 31st, 2007 statement.</p> <p>4 MR. KRATENSTEIN: You have the</p> <p>5 same caveat, I take it, as the prior statements</p> <p>6 about the -- this is not in the form in which</p> <p>7 you've received it.</p> <p>8 THE WITNESS: It is not in the</p> <p>9 form I received it.</p> <p>10 Q. Can you look at the second page of</p> <p>11 this document, please.</p> <p>12 A. Yes, I'm looking at the second</p> <p>13 page of the document.</p> <p>14 Q. Do you see where it says, "Market</p> <p>15 value of securities" --</p> <p>16 A. I do.</p> <p>17 Q. -- "long and short"?</p> <p>18 A. I do.</p> <p>19 Q. What's the number under "long"?</p> <p>20 A. \$24,106,000.</p> <p>21 Q. And I think it's 24,106,498?</p> <p>22 A. That is correct.</p> <p>23 Q. And the third page, do you see</p> <p>24 where it says dividends?</p> <p>25 A. I do see that.</p>	<p>1 A. That would have included Disney</p> <p>2 and eBay.</p> <p>3 Q. Okay. So your testimony is that</p> <p>4 Walt Disney and eBay were your long-term</p> <p>5 positions and you instructed Mr. Madoff to sell</p> <p>6 both of those?</p> <p>7 A. That is correct.</p> <p>8 Q. Did you instruct Mr. Madoff to</p> <p>9 sell any of your other stocks?</p> <p>10 A. No, we did not.</p> <p>11 Q. So in -- at the end of January</p> <p>12 2007, it still shows that you are long</p> <p>13 positions; is that correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And that you received dividends</p> <p>16 from the Walt Disney Company?</p> <p>17 A. That is correct. If you look at</p> <p>18 the statement, I guess the ex-dividend date was</p> <p>19 12/15/2006, so even though we sold out the</p> <p>20 position in 2007, we still had earned a dividend</p> <p>21 and it was payable on 1/12 of 2007.</p> <p>22 Q. And can you look at Fidelity</p> <p>23 Spartan?</p> <p>24 A. I can.</p> <p>25 Q. What was that entity?</p>

Page 226

1 A. My understanding was that that was  
2 a money market account.  
3 Q. Okay. Then you see security  
4 positions below that?  
5 A. Yes, I do.  
6 Q. Apple, Inc., CarMax, Inc. and  
7 General Motors Corp.  
8 A. I do see that.  
9 Q. What was your position with these  
10 three stocks?  
11 A. We were long Apple 65,000 shares,  
12 long CarMax 50,000 shares, long General Motors  
13 125,000 shares, and we had \$15,458 in a money  
14 market fund. And we had a Treasury bill with a  
15 face value of \$11,725,000 due 5/24/2007.  
16 Q. And you were not intending to sell  
17 those stocks?  
18 A. No, we were not intending to sell  
19 those stocks. I erred earlier in saying that we  
20 instructed Madoff to sell our entire portfolio.  
21 What I meant to say was that I instructed Madoff  
22 to sell the long-term stocks. I would have  
23 called him on the telephone, and I would have  
24 sent him a letter to that effect.  
25 Q. And these are the only two

Page 228

1 account?  
2 A. The 7 account showed the short  
3 against the box positions.  
4 Q. And what was the purpose of the 8  
5 account?  
6 A. The 8 account showed naked short  
7 positions.  
8 Q. You said at various times there  
9 was an 8 account. Why at various times?  
10 A. Madoff -- at all times the buck  
11 stopped with me. I directed Madoff in terms of  
12 trading. Madoff operated in -- within limited  
13 discretion. There were guardrails that he  
14 understood in terms of our strategy.  
15 There came a time where Madoff  
16 engaged in trading naked shorts. I was  
17 uncomfortable with it. I thought about it. He  
18 did it a second time. I instructed him not to  
19 do it again, and he did not do it again. So  
20 there were only -- I believe that only happened  
21 on two occasions.  
22 Q. Okay, I'm not sure I quite  
23 followed you. Are you saying the 8 account was  
24 opened on two occasions or that --  
25 A. I don't know that you would --

Page 227

1 long-term stocks?  
2 A. In this account.  
3 MR. KRATENSTEIN: By these two,  
4 you mean Walt Disney and eBay?  
5 MS. KERANEN: Walt Disney and  
6 eBay.  
7 MR. KRATENSTEIN: Correct,  
8 Mr. Sage?  
9 THE WITNESS: That is correct.  
10 Q. Do you see towards the top where  
11 the account number is listed as 1-S0004-3-0?  
12 A. I do.  
13 Q. Do you recognize that as being one  
14 of the sub-accounts of Sage Associates?  
15 A. I do.  
16 Q. How many sub-accounts for Sage  
17 Associates were there?  
18 A. There was a sub 3 account, a sub 7  
19 account and at various times a sub 8 account.  
20 Q. What was the purpose of the sub 3  
21 account?  
22 A. I assume those were the inter --  
23 what was the purpose? The 3 account showed the  
24 long -- the long positions.  
25 Q. And what was the purpose of the 7

Page 229

1 that's how you would articulate it in terms of  
2 open. How the accounts were set up in terms of  
3 numerical sequencing was, you know, was an  
4 internal Madoff decision. We didn't have  
5 anything to do with determining how his accounts  
6 were divided.  
7 Q. So you're saying more that when  
8 the transactions in the 08 accounts, or the 8  
9 accounts, were engaged in, to your knowledge  
10 they were only engaged in twice?  
11 A. That is my recollection.  
12 Q. Let's take a step back and just  
13 run through some housekeeping on Sage  
14 Associates.  
15 A. Sure.  
16 MR. KRATENSTEIN: Are you done  
17 with this document?  
18 MS. KERANEN: Yes.  
19 I'm handing the court reporter a  
20 document to be marked as Exhibit 17.  
21 (Exhibit Trustee-17 marked for  
22 identification.)  
23 Q. Mr. Sage, do you recognize this  
24 document?  
25 A. I do recognize this document.

Page 230	Page 232
<p>1 Q. What is this document?</p> <p>2 A. This is a response by Sage</p> <p>3 Associates to the Trustee's first set of</p> <p>4 interrogatories.</p> <p>5 Q. Do you know who drafted this</p> <p>6 document?</p> <p>7 A. This document would have been</p> <p>8 drafted by my attorney.</p> <p>9 Q. And can you turn to the last two</p> <p>10 pages of the document.</p> <p>11 A. I can.</p> <p>12 Q. Do you see the verification on the</p> <p>13 very last page?</p> <p>14 A. I do.</p> <p>15 Q. Is that your signature?</p> <p>16 A. That is my signature.</p> <p>17 Q. Did you review the responses to</p> <p>18 the Trustee's first set of interrogatories</p> <p>19 before they were submitted?</p> <p>20 A. I did.</p> <p>21 Q. And what did you do to ensure they</p> <p>22 were true and correct?</p> <p>23 A. I would have reviewed the answer</p> <p>24 to each question after preparing them. I would</p> <p>25 have checked with whatever relevant</p>	<p>1 Trustee's first set of interrogatories to myself</p> <p>2 in the Sage Associates account, in the lawsuit</p> <p>3 against Sage Associates.</p> <p>4 Q. Can you turn to the last page, the</p> <p>5 verification.</p> <p>6 A. I can.</p> <p>7 Q. Is that your signature?</p> <p>8 A. That is my signature.</p> <p>9 Q. Did you review the responses</p> <p>10 before they were submitted?</p> <p>11 A. I did.</p> <p>12 Q. And what did you do to review them</p> <p>13 to make sure the information was true and</p> <p>14 correct?</p> <p>15 A. I would have reviewed the</p> <p>16 pertinent Madoff statements; I would have</p> <p>17 reviewed the pertinent tax returns; and I would</p> <p>18 have reviewed the pertinent bank statements.</p> <p>19 Q. And did you speak with anybody,</p> <p>20 aside from counsel about the information</p> <p>21 contained herein?</p> <p>22 A. No, I did not.</p> <p>23 Q. So I believe we previously</p> <p>24 discussed that Sage Associates was formed in</p> <p>25 1980. Did you file any paperwork to form Sage</p>
Page 231	Page 233
<p>1 documentation needed to be checked with, and I</p> <p>2 would have then signed the document.</p> <p>3 Q. What did you check, what relevant</p> <p>4 information did you check in order to</p> <p>5 substantiate your responses?</p> <p>6 A. I would have checked the Madoff</p> <p>7 statements. I would have checked the tax</p> <p>8 returns, and I would have checked I believe the</p> <p>9 bank statements, yes. And the bank statements.</p> <p>10 Q. And did you speak with anybody</p> <p>11 about the submission before it was submitted?</p> <p>12 MR. KRATENSTEIN: Other than</p> <p>13 counsel?</p> <p>14 MS. KERANEN: Other than counsel.</p> <p>15 A. No.</p> <p>16 Q. You can set that aside for now.</p> <p>17 MS. KERANEN: I'm handing the</p> <p>18 court reporter a document to be marked as</p> <p>19 Exhibit 18.</p> <p>20 (Exhibit Trustee-18 marked for</p> <p>21 identification.)</p> <p>22 Q. Do you recognize this document?</p> <p>23 A. I do recognize this document.</p> <p>24 Q. And what is this document?</p> <p>25 A. This document is a response to the</p>	<p>1 Associates?</p> <p>2 A. The only thing we would have done</p> <p>3 was request a taxpayer ID number.</p> <p>4 Q. Did your mother have any role with</p> <p>5 Sage Associates?</p> <p>6 A. No.</p> <p>7 Q. And was Sage Associates ever</p> <p>8 dissolved?</p> <p>9 A. Formally?</p> <p>10 Q. Formally.</p> <p>11 A. No.</p> <p>12 Q. Did you ever discuss with</p> <p>13 Mr. Madoff the creation of Sage Associates?</p> <p>14 A. No.</p> <p>15 Q. Did you ever discuss with anyone</p> <p>16 at Mr. Madoff's firm the creation of Sage</p> <p>17 Associates?</p> <p>18 A. No.</p> <p>19 Q. How did you decide to create Sage</p> <p>20 Associates?</p> <p>21 A. When -- subsequent to my father's</p> <p>22 death, subsequent to the probate of the will,</p> <p>23 subsequent to the establishment of the trust</p> <p>24 under the will, my brother, my sister and myself</p> <p>25 had assets outside of the portfolio of stock,</p>

Page 234

1 and we decided to form a second tenancy in  
2 common, which we called Sage Associates, to  
3 invest with Madoff in convertible bond  
4 arbitrage, a convertible arbitrage. I sometimes  
5 use the word bond. I think the more accurate  
6 phrase, in my mind, is convertible arbitrage.

7 Q. And do you remember why you  
8 decided to form a tenancy in common?

9 A. We wanted to invest with Madoff,  
10 and we felt that the best form to invest with  
11 Madoff was to do so jointly, as we were doing in  
12 the trust, so we decided that a tenancy in  
13 common made the most sense, that we'd each  
14 contribute equal assets and we would be equal  
15 pro rata tenants in common.

16 Q. Was there a particular reason that  
17 you wanted to invest jointly instead of each  
18 having singular accounts?

19 A. When your father dies when you're  
20 in college and he dies unexpectedly and you have  
21 a different family than you had and that you  
22 expected, it brings you all closer together. We  
23 were close to our mom, we were close to each  
24 other. We had a -- we shared a lot of the same  
25 visions. We were all embarking on what was then

Page 236

1 line was that it was my responsibility to take  
2 care of.

3 Q. Did they ever come to you with any  
4 investment ideas for the Sage Associates  
5 account?

6 A. We talked as siblings or friends  
7 would talk, but around ideas. In fact, I'm  
8 recalling when we were purchasing stock back in  
9 1985 and both my sister and my brother by that  
10 time had children. My brother was living in  
11 California near Disneyland. My sister thought  
12 that the world revolved around taking your kids  
13 to Disney World. They were enamored of that  
14 company. It went a lot into why we decided to  
15 invest in Disney. And we, in fact, invested in  
16 Disney not only in Sage Associates but in Sage  
17 Associates II as well.

18 We wanted a -- our goal was always  
19 to have a diversified portfolio. It fit the  
20 need. So that's an example of how we might have  
21 interacted. But I'm sure it happened other  
22 times over the years. That's one recollection  
23 that I -- that I specifically remember.

24 Q. How did you verify that  
25 Mr. Madoff's firm was carrying out your

Page 235

1 a new life, and I think that togetherness was a  
2 comforting feeling.

3 Q. So there wasn't a legal or  
4 financial reason for doing a joint tenancy -- or  
5 a tenancy in common instead of individual  
6 accounts?

7 A. No.

8 Q. Over the life of Sage Associates,  
9 how did you keep your brother and your sister  
10 updated on what was going on in the accounts?

11 A. We were together a lot, as a  
12 family. So either when we were together or  
13 through phone calls. I was always available.  
14 It was my responsibility to keep them up to date  
15 at all times. I did so always. It was  
16 something I feel good about. I did a good job  
17 at it.

18 Q. Did they ever inquire with you  
19 about the performance of Sage Associates?

20 A. We talked about it. I think --  
21 we're all different people. I think they felt  
22 comfortable with me. I think they trusted me.  
23 I think I earned their trust. I think at all  
24 times I was available to them. So we talked  
25 about it on occasion, but I think the bottom

Page 237

1 directions?

2 A. The statements came in regularly.  
3 The confirms and trade slips, whatever you want  
4 to call them, came in regularly. It was no  
5 different than the account we had at Evans &  
6 Company in terms of the documentation we  
7 received. It was as straightforward as anything  
8 could be.

9 Q. Did you ever notice any  
10 irregularities in your account statements?

11 A. I did not recognize any  
12 irregularities in the account statements.

13 Q. Did you ever receive any actual  
14 stock certificates?

15 A. We never received stock  
16 certificates.

17 Q. Did you ever receive any DTCC  
18 confirmations?

19 A. I don't know what a DTCC --

20 Q. It's a Depository Trust --  
21 (Reporter clarification.)

22 MR. KRATENSTEIN: Let him finish  
23 his answer. I think he was -- Mr. Sage, finish  
24 your answer, and then counsel will ask her  
25 question. You don't know what what is?

Page 314	Page 316
<p>1 Q. If Mr. Madoff testified that the 2 specialties of his trading were convertible 3 securities trading and split-strike conversion. 4 A. Would it surprise me if he said 5 that his specialties were split-strike and -- 6 did he say that? 7 Q. And split-strike conversion. 8 A. Or is this a hypothetical 9 question? 10 MR. KRATENSTEIN: I'm going to 11 object to the form of the question. 12 A. I'm not sure what I'm supposed to 13 answer. 14 Q. Okay. So, Mr. Madoff testified 15 last week that you and your family did not have 16 a particular strategy that was one of his 17 specialties, convertible securities -- 18 A. Again, you're using that word 19 specialty -- you're using that -- I'm sorry. 20 I'm sorry. Why don't we do this again. 21 Q. Sure. 22 Last week Mr. Madoff testified 23 that you and your family did not have a 24 particular strategy that was one of Madoff's 25 specialties, i.e., convertible securities</p>	<p>1 testimony. 2 Q. From last week? 3 A. From last week. 4 Q. Why were you invested with a 5 securities firm that did not follow your 6 particular strategy for investing? 7 MR. KRATENSTEIN: Object to the 8 form -- 9 A. I have -- 10 MR. KRATENSTEIN: Hang on. Object 11 to the form of the question. 12 A. I have no idea. Madoff was a 13 broker. We were a customer. We had -- we 14 invested the way we wanted to invest. Madoff 15 never said to us, I can't do what you want us to 16 do. 17 Q. Did you ever consider moving your 18 accounts to a different broker? 19 A. No. 20 MR. KRATENSTEIN: I assume you 21 mean before he was arrested? 22 MS. KERANEN: Before he was 23 arrested. 24 THE WITNESS: At least there's a 25 little bit of humor here.</p>
Page 315	Page 317
<p>1 trading or split-strike conversion. 2 A. Could I ask you to read what he 3 testified to as opposed to you paraphrasing what 4 he testified to? 5 Q. Sure. 6 "QUESTION: And so could you just 7 expand on that and explain how the Sages were 8 different than your discretionary customers. 9 "ANSWER: Well, they basically 10 didn't have a particular strategy that was one 11 of our specialties, which would have been 12 convertible securities trading or split-strike 13 conversion, which happened in the later years." 14 A. Okay. So he did use the word 15 "specialties." I thought you said he didn't and 16 that you were paraphrasing. 17 Q. Oh, I misunderstood what you meant 18 by quotation marks then. 19 A. Sorry. Okay, now that we've 20 cleared that up. 21 MR. KRATENSTEIN: What's the 22 question? 23 Q. Now that -- were you previously 24 aware of that testimony? 25 A. I read Madoff's deposition</p>	<p>1 MS. KERANEN: I think if we can 2 take just five minutes and I'll formulate my 3 last questions. 4 MR. KRATENSTEIN: Sure. 5 THE VIDEOGRAPHER: The time is 6 6:52 p.m. Off the record. 7 (Recess taken.) 8 THE VIDEOGRAPHER: The time is 9 6:58 p.m. Back on the record. 10 MS. KERANEN: Thank you, Mr. Sage, 11 I have no more questions. 12 THE WITNESS: Oh, thank you. 13 MR. KRATENSTEIN: I think I have a 14 few questions, so we're going to stick around. 15 THE WITNESS: Surprise, surprise. 16 - - - 17 EXAMINATION BY MR. KRATENSTEIN: 18 Q. Before I get into some of these 19 letters that we've seen, I just wanted to 20 clarify some prior testimony you gave about 21 checking prices. 22 A. Okay. 23 Q. Do you just want to explain 24 clearly just so there's no confusion about what 25 your practice was with respect to checking the</p>

Page 318

1 prices of stocks in your portfolio.

2 A. I saw my job as the manager of the  
3 tenancies in common to track the stocks, to  
4 understand what our positions were, to at all  
5 times feel that if I was asked a question that I  
6 could respond appropriately and clearly. I had  
7 a responsibility to my brother and sister to  
8 manage that account properly, and that entailed  
9 my tracking the stocks frequently.

10 If I recall, Madoff did not list  
11 stock prices on the statements for many of the  
12 earlier years. I believe that changed at some  
13 point in time, where at the bottom of the  
14 statement he listed the monthly price. I could  
15 be wrong on this, but that's my recollection.

16 So if that is correct, then I  
17 would have checked during those periods the  
18 monthly end price of the stock. But it never  
19 would have dawned on me that Madoff might not  
20 accurately reflect the correct price of the  
21 stock. I truly never saw any variances in all  
22 of the years that I tracked the stocks.

23 Q. So when you received statements or  
24 confirms that reflected prices of stocks for  
25 transactions, stock transactions in your

Page 320

1 and the confirmations received for all of these  
2 transactions.

3 Q. Would those be statements and  
4 confirmations that you produced in this  
5 litigation?

6 A. They would be.

7 Q. I'm not going to go through them  
8 all with you now; they speak for themselves, but  
9 they're all verifiable.

10 MS. KERANEN: Objection.

11 MR. KRATENSTEIN: Well, I'll say  
12 that what's on the statements and confirms, what  
13 they say is verifiable --

14 MS. KERANEN: Objection.

15 MR. KRATENSTEIN: -- that they  
16 speak for themselves.

17 Q. Let's now look at what was marked  
18 earlier today as Exhibit 1.

19 A. Okay.

20 Q. Do you recall being shown that  
21 document earlier today?

22 A. I do recall that.

23 Q. And do you see in this document  
24 you are directing Mr. Madoff to execute two  
25 transactions in the Sage Associates account with

Page 319

1 account, would you go run off and check the  
2 newspaper to see if the statement or confirm was  
3 right?

4 A. No.

5 Q. Is it fair to say that you would  
6 generally check stock prices to see how the  
7 portfolio was doing in the market?

8 A. That is correct.

9 Q. I'm going to put back in front of  
10 you what was marked today as Trustee Exhibit 19.

11 A. Thank you.

12 Q. And do you see that in this  
13 document you are directing Mr. Madoff to execute  
14 six transactions in the Sage Associates account  
15 and two transactions in the Sage Associates II  
16 account?

17 A. I do see that.

18 Q. And then you asked to make a  
19 withdrawal?

20 A. I do see that, too.

21 Q. And did -- to your knowledge, did  
22 these transactions get executed as you directed?

23 A. To my knowledge, they did.

24 Q. What's that based on?

25 A. That is based on the statements

Page 321

1 respect to Emulex, E-m-u-l-e-x, and Broadcom; do  
2 you see that?

3 A. Yes.

4 Q. And you also make a direction with  
5 respect to a withdrawal from the Maurice S. Sage  
6 Foundation; do you see that?

7 A. I see those.

8 Q. And did you believe at the time  
9 that these trades were actually executed?

10 A. I did.

11 Q. And that your instructions were  
12 followed?

13 A. They were.

14 Q. On what do you base that?

15 A. I base that on receiving the  
16 confirmations and the statements and with regard  
17 to the check, receiving the check.

18 Q. The 25,000-dollar check.

19 A. That's correct.

20 Q. You can put that aside.

21 Putting back in front of you what  
22 was previously marked as Exhibit 26. Do you  
23 recall seeing that document earlier in this  
24 deposition?

25 A. Yes, I do.

Page 322

1 Q. And you talked about constructive  
2 sales and grandfathering. Do you recall those  
3 questions and answers?

4 A. I do recall them.

5 Q. Do you see that you ask in this  
6 letter Mr. Madoff to buy back into Broadcom in  
7 the Sage Associates account and RJR in the Sage  
8 Associates and Sage Associates II account prior  
9 to January 30th? Do you see that?

10 A. I do see that.

11 Q. And I believe you testified,  
12 correct me if I'm wrong, that seeing the  
13 statements and confirms may help you pinpoint  
14 when this letter was written. Do you recall  
15 that?

16 A. I do.

17 Q. So let me just help you with that.  
18 First of all, to your knowledge, by the way, did  
19 Mr. Madoff buy back into Broadcom and RJR as you  
20 instructed in this letter prior to January 30th?

21 A. That is my recollection.

22 Q. I'm going to show you what was  
23 previously marked at Mr. Madoff's deposition as  
24 Exhibit 30. It's two-sided.

25 A. Okay.

Page 324

1 MS. KERANEN: You can mark it as  
2 defense exhibits.

3 MR. KRATENSTEIN: Okay, 1?

4 MS. KERANEN: Yeah. I mean, you  
5 haven't marked any previous defense exhibits,  
6 have you?

7 MR. KRATENSTEIN: Not -- no.  
8 These are not -- at the Madoff deposition they  
9 were not called defense exhibits. So we can  
10 call it Defense Exhibit 1.

11 (Exhibit D-1 marked for  
12 identification.)

13 MR. KRATENSTEIN: Mark this as  
14 D-2.

15 (Exhibit D-2 marked for  
16 identification.)

17 MR. KRATENSTEIN: Mark this as  
18 D-3, please.

19 (Exhibit D-3 marked for  
20 identification.)

21 MR. KRATENSTEIN: Just for the  
22 record, since these are new exhibits, D-1 bears  
23 Bates No. SAGE004503; D-2 bears Bates No.  
24 SAGE0006859 through 64; D-3 bears Bates No.  
25 SAGE0008381 through 8382.

Page 323

1 MS. KERANEN: Thank you.

2 MR. KRATENSTEIN: You're welcome.

3 MS. KERANEN: This was marked as  
4 Exhibit 30?

5 MR. KRATENSTEIN: Yes, at  
6 Mr. Madoff's deposition.

7 MS. KERANEN: Because it looks  
8 like 70.

9 MR. KRATENSTEIN: Oh, I apologize.  
10 Let me check. It was Exhibit 70. Thank you for  
11 correcting me. It happens to be near tab 30 in  
12 my binder. It was Exhibit 70, correct. Thank  
13 you.

14 Q. While you're looking at that, let  
15 me also show you what was marked as Exhibit 71  
16 at Mr. Madoff's deposition.

17 MS. KERANEN: Thank you.

18 MR. KRATENSTEIN: You're welcome.  
19 And I'm going to ask the court reporter to just  
20 mark a few documents that were not marked in  
21 Mr. Madoff's deposition.

22 Counsel, how do you want to handle  
23 this because the prior exhibits were marked  
24 Trustee 1 through whatever. Because I'm marking  
25 this, how do you want to change it?

Page 325

1 BY MR. KRATENSTEIN:

2 Q. Mr. Sage, do you recognize the  
3 documents I've put in front of you?

4 A. I recognize the documents.

5 Q. Can you just tell us what they  
6 are.

7 A. There is a January --

8 Q. Tell us by exhibit number.

9 A. Exhibit No. D-2 is a January 31st,  
10 2003 Sage Associates II statement with Madoff.  
11 Exhibit D-1 is a confirmation  
12 trade date 1/8/03 on Reynolds.

13 Q. RJR?

14 A. Yes, RJR, R.J. Reynolds, showing  
15 that Madoff followed our instructions according  
16 to the letter that I sent, which I can now  
17 identify as having been sent in December of  
18 2002. That would be the Trustee's Exhibit  
19 No. 26.

20 Let me just also add that Exhibit  
21 D-1 is the confirm on Sage Associates R.J.  
22 Reynolds; and the Exhibit D-3 is the confirm on  
23 Sage Associates II R.J. Reynolds.

24 All of these documents combined,  
25 the confirms and the statement show that my

Page 326

1 instructions were followed in the letter that  
2 I've now identified as having been sent in  
3 December of 2002 with regard to the stocks that  
4 were grandfathered and needed to be opened up  
5 prior to January 31st of 2003.

6 Q. And those stocks were Broadcom and  
7 RJR?

8 A. That is correct.

9 Q. Thank you. You can put those  
10 documents aside.

11 I don't think that you were shown  
12 this letter earlier in this deposition, but it  
13 was marked at Mr. Madoff's deposition as  
14 Exhibit 73.

15 A. Okay.

16 Q. Do you recognize this document?

17 A. I do recognize that document.

18 Q. What is it?

19 A. It is a document, letter that I  
20 sent on behalf of the two stock account  
21 tenancies in common, Sage Associates and Sage  
22 Associates II, and the Maurice S. Sage  
23 Foundation to Madoff with the attention to  
24 Annette Bongiorno.

25 Q. And you write to Ms. Bongiorno --

Page 328

1 in that account. Do you see that?

2 A. I see that.

3 Q. And with respect to the Maurice S.  
4 Sage Foundation, you asked to withdraw a sum of  
5 \$16,000. Do you see that?

6 A. I see that.

7 Q. And you say, "This will not  
8 require the sale of any stock because this sum  
9 is available in money market funds." Do you see  
10 that?

11 A. I see that line.

12 Q. Do you believe that these trades  
13 were executed?

14 A. I do believe the trades were  
15 executed.

16 Q. Why?

17 A. They appeared in the statements,  
18 and we received confirmation of the same in  
19 trade slips, confirmations from Madoff's firm.

20 Q. Do you see the notes in the  
21 left-hand margin, the handwritten notes?

22 A. I do.

23 Q. Are those your notes?

24 A. They are my notes -- no, they are  
25 not my notes.

Page 327

1 well, strike that. Step back.

2 The fax line, which says 1/29/92,  
3 is that date correct?

4 A. That date would not be correct.

5 Q. And that's for the reasons you've  
6 previously stated about why the fax lines on  
7 your letters were not correct?

8 A. I never set my fax machines.

9 Q. You never set the date?

10 A. I never set the date on my fax  
11 machine.

12 Q. You state in your letter, quote,  
13 "After discussions with Paul, we have come up  
14 with the following plan with regards to the Sage  
15 Associates, Sage Associates II and Maurice S.  
16 Sage Foundation Inc. accounts." Do you see  
17 that?

18 A. I do.

19 Q. And then you give instructions as  
20 to Sage Associates with respect to Amgen,  
21 Symantec, Reynolds and National Semiconductor.  
22 Do you see that?

23 A. I do see that.

24 Q. For Sage Associates II you give a  
25 direction with respect to the Symantec position

Page 329

1 Q. Okay. Do you -- can you read them  
2 out loud, please, if you can understand them,  
3 the writing.

4 A. "Plus additional 3 million-dollar  
5 gain if possible, no long-term gain" -- "no long  
6 term."

7 Q. Do you know, first of all, what  
8 those notes mean? Do you have an understanding  
9 of what they mean?

10 A. That I wanted to take \$3 million  
11 in gains on the -- in the account but not  
12 long-term gains.

13 Q. Did you give that instruction to  
14 Ms. Bongiorno, the addressee of this letter?

15 A. I did.

16 Q. Why did you want to -- why did you  
17 give her that instruction?

18 A. It was always my goal to lower the  
19 margin debt. The Amgen, Symantec, Reynolds and  
20 National Semiconductor positions were held short  
21 against the box. They were short-term  
22 positions. They were shorted before the stocks  
23 were held for a year. I believe that it made  
24 sense to reduce the margin debt in that way.

25 We also had incurred significant



Page 330

1 margin interest. I wanted to be able to write  
2 off the margin interest, although margin  
3 interest could be carried forward to a  
4 subsequent year. Given that I could reduce the  
5 debt and write off the margin interest, it  
6 seemed to me like a logical move to make at that  
7 time.

8 I believe that there were  
9 significant losses in this year that we  
10 incurred. I did not -- they were, to the best  
11 of my recollection, not -- they were losses that  
12 I did not want to offset with long-term gains.  
13 It would have negated the value of my long-term  
14 gains to offset the short-term losses with those  
15 long-term gains.

16 So, I instructed to take these  
17 gains but not to take long-term gains.

18 Q. To your knowledge were your  
19 instructions followed?

20 A. To my knowledge these positions  
21 that I outlined were followed and no long-term  
22 gains were recognized.

23 Q. Do you know when you wrote this  
24 letter?

25 A. It would appear to me to be in

Page 332

1 the box account.

2 Q. In Sage Associates?

3 A. In Sage Associates II. The  
4 Exhibit No. 80 is the 3 account, the long  
5 positions in Sage Associates II. I see the --  
6 that we delivered the short position in the 7  
7 account against the long position in the 3  
8 account as I instructed.

9 Q. What are the date of those  
10 statements?

11 A. The date of those statements are  
12 December of 2003.

13 Q. And the last instruction in the  
14 letter that we put in front of you, which was  
15 marked at Mr. Madoff's deposition as Exhibit 73  
16 talks about at the end a withdrawal of \$16,000  
17 from the Maurice S. Sage Foundation account. Do  
18 you see that?

19 A. I do see that.

20 Q. And putting in front of you what  
21 was marked at Mr. Madoff's deposition as  
22 Exhibit 83, and I'll ask if you recognize that  
23 document?

24 A. I do recognize that document.

25 Q. What is it?

Page 331

1 December prior to Christmas, and the year I  
2 would be able to identify better if I could see  
3 the statements and the confirms.

4 Q. All right. Well I'll show you the  
5 statements. I don't know if we'll need to go to  
6 the confirms. But showing you what was  
7 previously marked at Mr. Madoff's deposition as  
8 Exhibit 74 and Exhibit 75.

9 A. So this letter would have been  
10 sent in 2002.

11 Q. Are you sure? Look at the date.

12 A. I'm sorry. The letter would have  
13 been sent in 2003. These are the statements  
14 that show that -- I see that Amgen and Symantec  
15 and Reynolds and National Semiconductor were all  
16 traded as I instructed.

17 Q. Let's look at -- that's in the  
18 Sage Associates account?

19 A. That is in Sage Associates.

20 Q. Now I'll show you the Sage  
21 Associates II statement. Showing you what was  
22 previously marked as Exhibit 80 at Mr. Madoff's  
23 deposition and Exhibit 81.

24 A. So Exhibit 81 is the December  
25 statement on the 7 account, the short against

Page 333

1 A. It is a memorandum for a check  
2 received on the Maurice S. Sage Foundation dated  
3 12/24/2003, in the amount of \$16,000 as I  
4 instructed in my letter.

5 Q. Thank you. You can put those  
6 documents aside.

7 I show you what was previously  
8 marked as Exhibit 84 at Mr. Madoff's deposition.

9 A. Okay.

10 Q. You see that the Bates number of  
11 this document is not a Sage Bates number? Do  
12 you see that?

13 A. I do see that.

14 Q. And do you see that these are --  
15 the handwriting starts "year end notes." Do you  
16 see that?

17 A. I see that.

18 Q. Do you see a reference in the  
19 notes to Sage group?

20 A. I see that.

21 Q. And then do you see the note that  
22 says, "Could have gone SAB on eBay but cust did  
23 not want it"? Do you see that?

24 A. I do see that.

25 Q. Do you have any idea what that

Page 334

1 refers to?

2 A. I believe in the previous letter  
3 when I was suggesting that we would like not to  
4 take any long-term gains, we had a long-term  
5 gain in eBay at the time, so when I was asked if  
6 we should go short against the box on eBay, I  
7 didn't want that. We could have gone short  
8 against the box in eBay and not opened it up  
9 prior to January 31st of the subsequent year and  
10 recognized the gain, as a constructive sale.  
11 But that would have defeated the purpose of what  
12 I wanted to do.

13 Q. And you were shown Exhibit 24  
14 before, and we had talked about the fact that  
15 there were some notes missing on that. So let  
16 me just get for you what was marked as  
17 Exhibit 88 at Mr. Madoff's deposition, which is  
18 a -- we double-sided it --

19 A. Okay.

20 Q. -- but I'll put that in front of  
21 you as well.

22 So, Mr. Sage, do you see that this  
23 version of the document has the additional notes  
24 that we were referring to earlier that were  
25 missing from Exhibit 24? Do you see that?

Page 336

1 A. This was that period I was trying  
2 to explain before in 2006 where we -- we just  
3 were indecisive -- I was indecisive about what I  
4 wanted to do with our stock portfolio. And I  
5 guess I sent Madoff two letters and -- I had  
6 sent Madoff two letters about that, and  
7 obviously we had spoken about this as earlier as  
8 2005. And because I had sent those letters,  
9 Bongiorno must have called me back to say, what  
10 do you want to do, because I had clearly  
11 indicated that we were going to sell off the  
12 portfolio.

13 But as the months went by, as I  
14 said earlier, I decided I really wanted to  
15 realize the gains in 2007. So I just waited as  
16 long as I could. I don't know that I ever  
17 called back by Tuesday 8/29. Probably by that  
18 time I had made a decision to see if we could  
19 get to January 1st of 2007.

20 In fact, that is what we wound up  
21 doing. And, you know, I guess all of this  
22 letter writing was me thinking I wanted to sell  
23 the stocks. As I mentioned, we were paying the  
24 estimated taxes, but at the end of the day, I  
25 didn't pull that trigger.

Page 335

1 A. I see that.

2 Q. And can you read out loud the  
3 notes that are on the second page of the  
4 document.

5 A. "I called Malcolm Sage and of  
6 June."

7 Q. Is it and or end?

8 A. "End of June to say the accounts  
9 were as close to ever and should" -- "even and  
10 should we do the transfers. He said he would  
11 talk to Paul, call back. Called again end of  
12 July. He said he didn't get a chance to get  
13 talk" -- "to yet talk Paul and he will call me  
14 back. Called again 8/23/06. He said the" --  
15 premises?

16 Q. Promises.

17 A. -- "promises to call me" -- oh.  
18 "And he said he promises to call me back by  
19 Tuesday 8/29."

20 Q. Does reading these notes refresh  
21 your recollection of conversations you had with  
22 Ms. Bongiorno in or around June through August  
23 of 2006?

24 A. It does.

25 Q. What was this about?

Page 337

1 Q. That was your trigger to pull?

2 A. That was my trigger to pull.

3 Q. Did you understand -- you  
4 mentioned that you understand these notes to be  
5 Ms. Bongiorno awaiting your instructions; is  
6 that correct?

7 A. It would appear that way. I don't  
8 know her handwriting but --

9 Q. Was that consistent with your  
10 recollection?

11 A. It's consistent with my  
12 recollection.

13 Q. Thank you. A few more questions.  
14 You testified earlier about the  
15 decision to buy Disney. Do you remember that?

16 A. I do recall that.

17 Q. And just to refresh us, when was  
18 Disney purchased?

19 A. My recollection that it was -- is  
20 that it was purchased in the spring of 1985.

21 Q. Were other stocks purchased at  
22 that time?

23 A. At the time we purchased Disney,  
24 Disney was bought both in Sage Associates and  
25 in -- and in the Maurice Sage Trust because we

Page 338

1 didn't transfer the trust assets to Sage  
2 Associates II until 1986, approximately in June.

3 So we bought Disney in those two  
4 accounts at the same time that we bought Disney  
5 in Sage Associates. My recollection is that in  
6 Sage Associates we bought Merrill and Upjohn and  
7 that in Sage Associates II we bought Disney,  
8 Anheuser, Boise, American Express, and I believe  
9 we bought Merrill in that account as well.

10 Q. So those stocks you instructed  
11 Mr. Madoff to purchase in 1985?

12 A. That's my recollection.

13 Q. How long were those stocks held,  
14 to your recollection?

15 A. With the exception of Upjohn,  
16 which merged with Pharmacia, and became at first  
17 Pharmacia Upjohn, then became Pharmacia and then  
18 merged with Pfizer, and we sold that stock, my  
19 recollection is in 2005, I believe or 2006, but  
20 all of the other stocks were held till 2007 in  
21 January when I instructed Madoff to sell off all  
22 of those positions.

23 Q. So you held those -- that stock  
24 portfolio in those two accounts with the one  
25 exception you mentioned all the way from 1985

Page 340

1 A. Do I have evidence that the trades  
2 that he executed and listed on our statements  
3 and the confirms, that they did not happen? Do  
4 I have evidence of that?

5 Q. No, no, that's not what I asked.

6 A. Oh, no --

7 Q. Can you read back my question,  
8 please.

9 (Last question read.)

10 A. Maybe I'm getting tired. How did  
11 that differ from what I said? Can you ask the  
12 question again?

13 Q. Sure. So you have testified that  
14 you know that your directions were followed  
15 because of the account statements and the trade  
16 confirmations sent to you by Madoff.

17 A. That's correct.

18 Q. Do you have any evidence that was  
19 not sent to you by Madoff that those trades  
20 actually occurred?

21 A. Evidence that was not sent to me  
22 by Madoff? No.

23 MS. KERANEN: I have no further  
24 questions.  
25 - - -

Page 339

1 until 2007?

2 A. That is correct.

3 Q. Why did you do that?

4 A. It was -- no one ever knows when  
5 one starts on a road as to where that road will  
6 lead. Certainly not in the market. But that  
7 was our -- our objective was to grow a portfolio  
8 of stocks and to hold them for as long as  
9 possible and grow a nest egg that we could make  
10 certain that we provided for ourselves and our  
11 families as time went by.

12 Q. And by January 2007 did you  
13 believe you had accomplished that goal?

14 A. I do believe that we had  
15 accomplished that goal.

16 MR. KRATENSTEIN: I have no  
17 further questions.

18 MS. KERANEN: I have one question  
19 for you, Mr. Sage.  
20 - - -

21 CONTINUED EXAMINATION BY MS. KERANEN:

22 Q. As you sit here today, do you have  
23 any evidence that was not generated by Madoff  
24 that the trades that you directed actually  
25 occurred?

Page 341

1 CONTINUED EXAMINATION BY MR. KRATENSTEIN:

2 Q. Do you believe that your trades  
3 were executed?

4 A. I do believe my trades were  
5 executed.

6 Q. And that's based on what?

7 A. Based on the confirms and the  
8 statements.

9 MR. KRATENSTEIN: Thank you.

10 THE VIDEOGRAPHER: The time is  
11 7:33 p.m. This concludes the deposition. Off  
12 the record.

13 (Deposition concluded.)

14 -o0o-